

Message Text

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ACTION OPIC-12

INFO OCT-01 ARA-11 ADP-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-10 NSAE-00 TRSE-00 XMB-07 CIEP-02 LAB-06

SIL-01 OMB-01 L-03 INT-08 SSO-00 INRE-00 /095 W

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O 072236 Z MAY 73

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC IMMEDIATE 4245

C O N F I D E N T I A L SANTIAGO 1974

E. O. 11652: GDS

TAGS: CI, BDIS

SUBJ: CERRO

PASS OPIC

1. SUMMARY: CERRO NEGOTIATIONS STALLED TODAY AND WALSH IS RETURNING TO US. GOC WANTS LOWER INTEREST RATES THAN THOSE PROPOSED AND IS RESISTING ANY PROVISION FOR OTHER THAN COMPLETE CHILEAN LEGAL JURISDICTION. BOTH THESE ISSUES INVOLVE POLITICAL CONSIDERATIONS. END SUMMARY.
2. WALSH MET WITH INOSTROZA AND ARRATE AT MID- DAY TODAY. HE SUBSEQUENTLY REPORTED TO EMBASSY THAT IT WAS NOT RPT NOT POSSIBLE TO RESOLVE OUTSTANDING ISSUES IN ORDER PERMIT AGREEMENT PRIOR ANNUAL CERRO MEETING TOMORROW. WALSH IS RETURNING TO US TONIGHT, LEAVING LOCAL LAWYER ENRIQUE PUGA TO TRY TO MAKE FURTHER PROGRESS.
3. FOLLOWING ARE MAJOR STICKING POINTS AS WALSH DESCRIBES THEM:

(A) INTEREST RATES IN COMPENSATION AGREEMENT. CERRO HAS PROPOSED 9-3/8 PER CENT ON NOTES AND 8.8 PER CENT ON EQUITY. GOC DOES NOT WISH GO BEYOND 6 TO 6-1/2 PERCENT. WALSH STILL BELIEVES WAYS CAN BE FOUND TO SOLVE
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THIS PROBLEM (SANTIAGO 1113).

(B) TERMS OF 2-1/2 PERCENT OVER LONDON INTER- BANK RATE TO BE CHARGED BY SWISS LENDERS ON ANDINA EXPANSION LOAD. ACCORDING WALSH, ARRATE AND INOSTROZA IN EFFECT ASKED TODAY FOR CERRO GUARANTEE OF LOAN TO PERMIT NON- COMMERCIAL RATE. WALSH REFUSED.

(C) WHAT WALSH CALLS " MOST FAVORED NATION CLAUSE":
I.3. STATEMENT IN DRAFT COMPENSATION AGREEMENT THAT " IF CODELCO OR BANCO CENTRAL EXECUTE IN THE FUTURE ANY AGREEMENT WITH FOREIGN PRIVATE OR PUBLIC ENTITIES IN WHICH EITHER OF THEM (1) WAIVES ANY RIGHT OF SOVEREIGN IMMUNITY FROM EXECUTION WITH RESPECT TO THE OBLIGATIONS OF ANY AGREEMENT; OR (2) CONSENTS THAT THE AGREEMENT SHALL BE RULED BY LAW OTHER THAN CHILE' OR SWITZERLAND' S, CODELCO OR BANCO CENTRAL, AS THE CASE MAY BE, WILL IMMEDIATELY ADVISE CERRO ABOUT SUCH AGREEMENT AND THIS AGREEMENT WILL THEREBY BE AMMENDED FROM THE DATE OF SAID ADVICE TO INCLUDE IN IT THE SUBSTANCE OF THE RESPECTIVE WAIVERS OR CONSENTS." GOC HAS SO FAR REJECTED CLAUSE, WHILE WALSH SAYS HE HAS REMINED FIRM.

(D) PROVISION IN DRAFT THAT " THE AGREEMENT, THE NOTES AND THEIR GUARANTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SWITZERLAND." GOC IS OPPOSED TO ANY FOREIGN JURISDICTIO. WALSH HAS NOW PROPOSED SUBSTITUTION OF ARBITRATION CLAUSE WHICH WOULD REFER DISPUTES TO INTERNATIONAL CHAMBER OF COMMERCE IN PARIS.

4. GOC NEGOTIATORS EVIDENCED CONCERN OVER POSSIBLE EFFECT ON STATUS OF SUMITOMO COMMITMENTS OF PROPOSAL THAT CERRO TAKE FIXED PERCENTAGE OF ANDINA PRODUCTION (SANTIAGO 1486). ACCORDING TO WALSH, ARRANGEMENT WOULD NOW BE THAT CERRO WILL TAKE 10,000 TONS OF REFINED COPPER ANNUALLY FROM LAS VENTANAS REFINERY WITH NO STIPULATION AS TO ORIGINAL SOURCE. GOC ALSO BALKED AT PROPOSAL THAT CERRO ACT AS PURCHASING AGENT IN ACQUIRING MACHINERY AND EQUIPMENT FOR ANDINA EXPANSION. WALSH TOLD US HE HAD NO PROBLEM IN ELIMINATING THAT PROVISION.

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5. RE OPIC ASPECT, DRAFT AGREEMENT AS IT NOW STANDS WOULD BECOME EFFECTIVE ONLY WITH " THE APPROVAL BY OPIC IN A FORM SATISFACTORY TO CERRO." WE ARE POUCHING TO OPIC COPIES DATED MAY 4 OF ENGLISH TRANSLATION OF DRAFT COMPENSATION AND EXPANSION AGREEMENTS AND PROMISSORY

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